IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WA.No. 1434 of 2006()

{IN W.P.(C)NO.18191/2005 OF THIS COURT}
.....

APPELLANT/PETITIONER:

O.N.SARADA, DEPUTY TAHSILDAR,
LAND ASSIGNMENT OFFICE, KARIMANNOOR,
THODUPUZHA,
PRESENTLY WORKING AS DEPUTY TAHSILDAR,
OFFICE OF SPECIAL TAHSILDAR (LT),
THODUPUZHA.P.O. IDUKKI DISTRICT.

BY ADVS. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.AJESH. M.R.

RESPONDENTS:
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1. THE COMMISSIONER OF LAND REVENUE,
THIRUVANANTHAPURAM.

2. THE DEPARTMENTAL PROMOTION COMMITTEE
(LOWER) FOR REVENUE DEPARTMENT
FOR PREPARING THE SELECT LIST FOR
PROMOTION TO THE POST OF TAHSILDAR,
REP. BY ITS CONVENOR, DEPUTY LAND
REVENUE COMMISSIONER,
COMMISSIONERATE OF LAND
REVENUE, THIRUVANANTHAUPURAM.

3. C.R.JOSE PRAKASH,
DEPUTY TAHSILDAR,
OFFICE OF THE DISTRICT COLLECTOR
THIRUVANANTHAPURAM.

4. BANDIRA DEPUTY TAHSILDAR,
TALUK OFFICE, THODUPUZHA.

5. N.K.SUNDARESAN, TAHSILDAR,
O/O.DISTRICT COLLECTOR, IDUKKI.

6. A.GEETHA TAHSILDAR,
O/O.DISTRICT COLLECTOR, ERNAKULAM.

7. M.K.SOBHANA, TAHSILDAR,
O/O.DISTRICT COLLECTOR, ERNAKULAM.

8. P.MANOHARAN, TAHSILDAR,
COMMISSIONERATE OF LAND REVENUE,
THIRUVANANTHAPURAM.

9. R.SUDHEENDRAN, TAHSILDAR,
O/O.DISTRICT COLLECTOR, KOLLAM.

10. M.SALIM RAJAN,
TAHSILDAR, O/O.DISTRICT COLLECTOR,
KOLLAM.

11. R.BIJU, TAHSILDAR,
O/O.DISTRICT COLLECTOR, KOLLAM.

12. V.K.GOPALAKRISHNAN NAIR,
TAHSILDAR, O/O.DISTRICT COLLECTOR,
ALAPPUZHA.

13. P.ABDU RAHIMAN, DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR,
MALAPPURAM.

14. A.GOPAKUMAR, DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR, PATHANAMTHITTA.

15. VIJAYAN.T.T.E.,
DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR,
KANNUR.

16. A.GAENSAN, DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR, KANNUR.

17. R.HARIDASAN, DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR,
KOTTAYAM.

18. ALICE JACOB, DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR, KOTTAYAM.

19. SOUDA BEEVI.A,
DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR,
KOLLAM.

20. P.S.SUJATHA, DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR, KOLLAM.

21. V.REMA BAI,
DEPUTY TAHSILDAR,
O/O.DISTRICT COLLECTOR, KOLLAM.

22. THE DEPUTY LAND REVENUE COMMISSIONER,
COMMISSIONERATE OF LAND REVENUE,
THIRUVANANTHAPURAM.

R3 TO R21 BY ADV. SRI.N.SUGATHAN
R1, R2 & R22 BY GOVERNMENT PLEADER SRI.BENNY GERVACIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.Nos.2353, 2354 &1434 of 2006

Dated this the 14th day of December, 2006.

JUDGMENT

Abdul Gafoor, J.

The first two writ appeals are against the common judgment in W.P.(C)Nos.19803/05 and 25902/05. The issue raised in W.A.No.1434/06 is also same as in other two appeals.

2. Shortly put, the point arising for consideration in these cases is whether 'Criminal Judicial Test' prescribed as an alternate qualification to a Degree in Law for appointment to the post Tahasildar as per Rule 6(a) of the Special Rules for Kerala Revenue Service, is a 'special test' or not. If the answer is in the affirmative, the writ appeals have to be dismissed. On the other hand, if the answer is in the negative, the impugned judgment shall have to be reversed.

3. As the arguments raised before the learned single judge are re-agitated before us, we have to re-appreciate the facts. The spectrum of the facts in these cases is as follows:

4. The contesting incumbents belong to the category of Deputy Tahsidlar born on the Kerala Revenue Subordinate Service,. All of them claim promotion to the post of Tahsildar governed by the Special Rules for the Kerala Revenue Service [Special Rules].

5. First of all, we will consider W.A.Nos.2353 and 2354/06. The petitioners in the writ petitions, which led to these writ appeals, are seniors to the appellants. Admittedly, the writ petitioners belong to scheduled castes. They were superseded while preparing the select list for appointment to the post of Tahsildar, on the ground that they did not pass 'Criminal Judicial Test'. Thereupon, they made representations. Those were turned down. So they approached this court.

6. According to them, they were entitled to exemption from passing the said test by reason of a Government Order issued in terms of Rule 13 AA read with Rule 13AB of the General Rules in Part II of the Kerala State and Subordinate Services Rules {hereinafter referred to as "**the General Rules**"}.

7. This was resisted by the official respondents, who alone figured as respondents in the writ petitions that 'Criminal Judicial Test', which is prescribed as an alternate qualification for Law Degree for appointment to the post of Tahsildar was the basic qualification. One was not entitled to exemption from such basic qualification. Therefore, the writ petitioners were not entitled to test exemption and they were rightly superseded.

8. But the learned single Judge, relying on the decision of a Division Bench consisting of one of us (Abdul Gafoor, J.) in W.A.No.1138/06 and connected cases and also referring to the decision in ***State of Kerala v.***

Chathan {2005(1)K.L.T. 75} found that, the writ petitioners were entitled to exemption from 'Criminal Judicial Test'.

9. The appellants were not parties to the writ petition. By reason of this direction, according to them, they are adversely affected, as they are the persons, who have passed the said test and are fully qualified for promotion. The judgment impugned will enable the writ petitioners to supersede qualified hands like them. Therefore, these writ appeals with leave.

10. Their contention is that the view taken by the learned single Judge that the writ petitioners being scheduled castes would get exemption from 'Criminal Judicial Test', was not justified. According to them, it is a basic qualification from which no exemption is provided by the Rules.

11. The writ petitioners contend that Criminal Judicial Test cannot be a basic qualification. It is only a

test conducted by the Public Service Commission. It comes within the purview of exemption provided for in Rule 13AA and 13AB. So the view contention taken by the learned single Judge is not liable to be interfered with.

12. Qualification to the post of Tahsildar is as provided in Rule 6 of the Special Rules, which reads as under:

> **"No person shall be eligible for appointment to the service, unless he --**
>
> **(a) holds a degree in law of a recognised University or has passed the Criminal Judicial Test; and**
>
> **(b) has passed the following departmental tests:-**
>
> **(i) Revenue Test (All parts);**
>
> **(ii) Account Test (Lower) or Account Test for Subordinate Officers, Part I (Madras); and**
>
> **(iii) Survey Test (Higher)"**

These different qualifications are under two different heads, the latter being under the head of Departmental Tests. The former is a basic qualification of a Degree in Law of a recognised University or alternatively a pass in Criminal Judicial Test'. Necessarily, for the purpose of Rule 6, 'Criminal Judicial Test' does not come within "departmental test" specifically mentioned in clause (b) of Rule 6, like "Revenue Test, Account Test and Survey Test". Therefore, it is not a "**departmental test"** for the purpose of Rule 6, wherein the required qualifications are prescribed.

13. What was considered in the judgment in W.A.No.1138/06 and connected cases relied on by the learned single Judge was whether the test prescribed for recruitment by transfer to the post of Superintendent of Survey and Land Records, Category III in Table in the Special Rules for Kerala Survey and Land Records Service viz., **Head Surveyors' Test** was a special test or not.

There, that test was prescribed as a specific test and not as an alternate to any academic qualification. Taking into account that aspect, that it was a test in addition to the minimum academic qualification of S.S.L.C prescribed for that post, it was held therein that it was a 'special test' from which the candidates belonging to the scheduled caste coming within the purview of the orders issued by the Government in terms of Rule 13 AA of the General Rules would be entitled to temporary exemption from that test, for promotions.

14. Rule 13 A of the General Rules provides for exemption from "Special and Departmental Tests' prescribed by Special Rules for a limited period. Rule 13 AA enables Government to issue orders exempting members of Scheduled Caste/Scheduled Tribe already in service for a specified period, from passing '**the tests referred to in Rule 12 or Rule 13 A**', which include the special tests also. This exemption is in terms of orders

issued under Rule 13AA, from time to time which is available even now. Rule 13 AB provides that the exemption so ordered "**shall be deemed always to have been applicable to the members of Scheduled Caste/Scheduled Tribe who entered service after that date also**." Therefore, the writ petitioners certainly come within the ambit of the said rules and orders issued thereunder in respect of the special tests as well. There cannot have any different view. But as already mentioned, the point is whether '**Criminal Judicial Test**' is a special test or not to claim such exemption.

15. In this case, Rule 6 (a) prescribes Law Degree, or, as an alternate, 'Criminal Judicial Test', over and above the departmental test specifically provided for in Clause (b). The very same qualification was prescribed even in the Special Rules, which preceded the present Special Rules. This is not disputed. At that time, Government themselves had, in Ext.R2(a) produced in

W.P.(C)No.19803/05 leading to W.A.No. 2353/06, provided as follows:

> "**Government are pleased to order that the Criminal Judicial Test be treated as a basic qualification for appointment by promotion to the posts of Tahsildars subject to the provision contained in Rule 5 of the Special Rules for the Kerala Revenue Service issued in the G.O. Read as third paper above."**

Thus, the Government which prescribed the very same qualification for the very same post, earlier had also clarified, in unequivocal terms, that '**Criminal Judicial Test**' is a basic qualification for appointment to the post of Tahsildar. This order was issued on 17.10.1966. The very same qualification is dubbed into to Rule 6(a) when the new special Rules were promulgated as per S.R.O.No.552/80 to be effective from 25.9.1962.

16. Thus, the rule making authority which prescribed that qualification of '**Criminal Judicial Test**'

as an alternate to law degree has made it clear that, it is a basic qualification, from the days of the earlier Special Rules. When the rule making authority thus specifies it as a basic qualification and not as a special test, no one can claim exemption from that qualification.

17. Exemption is provided in Rule 13 A, 13AA and 13 AB. The exemption so provided and continued now in the case of members of Scheduled Caste/Scheduled Tribe, is from 'special or departmental tests' dealt with in Rule 13 A and not from a basic qualification or special qualification. When the Government themselves have clarified that 'Criminal Judicial Test' is not a test qualification, but a basic qualification, it is beyond the coverage of Rule 13 AA or 13 AB, which only enable Government to pass orders exempting members of Scheduled Caste/Scheduled Tribe '**from passing the tests referred to in Rule 13 or Rule 13 A**' of the General Rules.

18. Over and above this, there is yet another aspect as well. The first proviso to Rule 6 of the Special Rules makes it clear that:

> **"The qualification under Clause A shall be deemed to have become compulsory with effect from 17.10.1966".**

This date is the date of Ext.R2(a), wherein the Government have clarified that 'Criminal Judicial Test' is a basic qualification. When this qualification is made thus compulsory with effect from 17.10.1966, the date of Ext.R2(a) as per the new Special Rules issued in S.R.O.No.550/80, in spite of the exemption available to the members of scheduled castes or scheduled tribes in terms of the Government Orders issued in terms of Rule 13 AA, or the general exemption available under Rule 13A, necessarily, this shall be taken as a very special provision in the Special Rules which shall, on any count, override even the Special Provisions relating to

exemption contained in the General Rules. By reason of this special provision making the said qualification compulsory for appointment as Tahsildar, the 'Criminal Judicial Test' become out of reach of exemption provisions in the General Rules.

19. These aspects have never been noted by the learned single Judge, while holding that the writ petitioners were entitled to exemption from the 'Criminal Judicial Test'.

20. Nobody can, therefore, aspire for appointment as Tahsildar without the general qualification which is clarified as the basic qualification and made compulsory as per the Special Rules. Necessarily, W.A.Nos.2353 and 2354 of 2006 have to be allowed, setting aside the impugned judgment. We do so.

21. Now, we will consider W.A.No.1434/06. Similar contention was raised by the appellant/writ petitioners before another learned single Judge. But that

learned single Judge found that, going by Rule 6(a), 'Criminal Judicial Test' is prescribed as an alternate qualification for Degree in Law and therefore, one is not entitled for exemption from that test, even if he belongs to the scheduled caste. This judgment is appealed against heavily relying on the view taken by the very same learned single Judge in another judgment in O.P.No.4025/96 to the effect that exemption is available to scheduled castes from the said test for appointment to the post of Tahsildar. In both the judgments, the clarification issued by the Government or the proviso to Rule 6 as dealt with herein had never been gone into.

22. As we have taken a decision in W.A.Nos.2353 and 2354/06 that no one is entitled for exemption, so long as the 'Criminal Judicial Test' is clarified as a basic qualification and made compulsory for appointment to the post of Tahsildar, the conclusion arrived at in the judgment impugned in W.A.No.1434/06

cannot be stated to be faulty and the view taken in the judgment in O.P.No.4025/96 by that learned single Judge cannot be said to be good law.

Accordingly, we overrule the view taken in the judgment in O.P.No.4025/96. This writ appeal {W.A.No.1434/06}, therefore, fails and it is dismissed.

The 1st respondent in W.A.No.2353/06 was promoted as Tahsildar on 16.8.2005 on the basis of the interim order passed in the writ petition leading to this appeal. He has already retired on 31.8.2005. Anyhow, considering this aspect, it is ordered that no recovery shall be effected from him consequent on this judgment allowing the appeal and dismissing his writ petition.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

P.S. To Judge

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

W.A.Nos.2353, 2354
& 1434 of 2006

JUDGMENT

14th December, 2006.